there is on this subject is unsettled. It would seem the more natural step to bring an action for violation of the contract of pledge, or to tender payment before bringing the action of trover. In the action on the contract, at least, an equitable defence would be allowed. The plaintiff's damages would be diminished by the amount of his debt to the defendant, the pledgee.

On the precise question involved in the two cases cited there is a conflict of opinion. In England the law is contrary to these authorities. The first English case on the subject, *Johnson* v. *Stear*, 15 C. B. N. S. 330, held that the pledgee's act was conversion, but that the amount of damages should be only the pledgor's actual loss, — that the pledgee's interest in the pledge at the time of the conversion should be taken into account. Mr. Justice Williams in an able dissenting opinion maintained that the pledgee stood in practically the same position as a factor, — that by his act the pledgor regained immediate right of possession, and was entitled to judgment in trover for the full value of the goods. Obviously, if there was conversion at all, full damages should have been awarded. Two later cases, *Donald* v. *Suckling*, L. R. 1 Q. B. 585, and *Halliday* v. *Holgate*, L. R. 3 Ex. 299, practically overruled *Johnson* v. *Stear* by holding that there was no conversion. To support this view, the court maintained that a pledge is something more than a mere bailment, and that the pledgee, by parting with possession, does not lose his special property in the pledge. Mr. Justice Shee dissented in *Donald* v. *Suckling* on the grounds put forth by Mr. Justice Williams in the earlier case. Nevertheless, these two cases represent the English law.

In the United States the question is still open. Some courts adopt the English view without question or hesitation. Others maintain the views adopted by Georgia and Missouri courts. The English doctrine would seem to be the less satisfactory. There is no cogent reason for holding that the pledgee gets so much more extended rights than a bare bailee that he can dispose of the article pledged without losing his lien. It would seem more natural and consistent that, apart from the privilege of pledging up to the amount of the original security, — a proceeding which in no way affects the first pledgor's position, — the pledgee should have no more right than the factor holding his principal's goods, on which he loses his lien in parting with possession. Just as the pledgor may maintain trover for destruction of the pledged goods by the negligence of the pledgee, so should he be allowed trover when the pledgee has repledged the goods for an amount greater than the original pledgor's indebtedness to him.

RESPONDEAT SUPERIOR IN THE CASE OF CHARITABLE CORPORATIONS. — Is the doctrine of *respondeat superior* to be applied to charitable corporations? A *résumé* of the judical decisions in point may start appropriately with the case of *Duncan* v. *Findlater*, 6 Cl. & Fin. 894 (1839), decided on appeal from the Scotch Court of Session. The only importance of the case lies in a dictum by Lord Cottenham to the effect that the funds of a body incorporated for public purposes can never be diverted from those purposes to the payment of damages which are recovered for injuries caused by the negligence of the servants of the corporation; and that a suit for such damages is consequently idle, and will not be entertained by the courts. This view was reaffirmed and applied to charitable corporations

in *Feoffees of Heriot's Hospital* v. *Ross*, 12 Cl. & Fin. (1846), also a Scotch appeal case. *Holliday* v. *St. Leonard's Parish*, 11 C. B. N. S. 192 (1861), although dealing with the liability of a local surveying board, lays down a rule which is often invoked to protect charitable corporations: "Persons intrusted with the performance of a public duty, discharging it gratuitously, and themselves taking no personal share in the mode of its performance, are exempted from liability for the negligent acts of the persons employed by them." (Per Erle, C. J., p. 204.) The great case on this point of law was decided in the House of Lords in 1866 ("*Mersey Docks and Harbor Board*" *Trustees* v. *Gibbs*, L. R. 1 H. L. 93). This case also, though not dealing with charitable corporations, is applicable to them. The court overthrows the dictum in *Duncan* v. *Findlater*. Trustees here managed certain docks solely for the public benefit; but according to the terms of the incorporating statutes, as interpreted by Blackburn, J., a duty was imposed upon the corporation "to take reasonable care that they" (i. e. the docks) "were in a fit state" for public use; and it was held that the corporation, despite its public nature, could not rid itself of liability for non-performance of its duty, by relegating performance of that duty to its servants. The funds of the corporation were held applicable to the payment of damages recovered for breaches of duty. *Foreman* v. *Mayor &c.*, L. R. 6 Q. B. 214 (1884), marks the limit reached by the English cases. A servant of the local board of highway surveyors had negligently left stones on the highway. It does not appear whether this was a breach of the duty imposed on the board, or mere collateral negligence of the servant. It was said, however, that a corporation established for public purposes was liable for the negligence of its servants to the same extent that a private person or private corporation would be liable; and it was also said that *Mersey Docks &c. Trustees* v. *Gibbs* had overruled *Holliday* v. *St. Leonard's*, though not by name.

In *Donaldson* v. *Commissioners &c.*, 30 New Bruns. Rep. 379 (1890), plaintiff brought suit against a hospital for negligent treatment at the hands of the hospital physicians and nurses. The defendant's demurrer admitted the alleged duty to see that its patients received proper treatment, but rested its defence on the broad claim that a charitable corporation is not liable for torts of its servants, and cited *Holliday* v. *St. Leonard's*, and the earlier House of Lords cases, *supra*. It was properly held, however, that as the defendant had admitted a duty to bestow careful treatment, it was liable for non-performance of that duty, although the non-performance was due to its servants' negligence. This case plainly goes no farther than *Mersey Docks &c. Trustees* v. *Gibbs*.

In the United States, the decisions are irreconcilable. *Downes* v. *Harper Hospital*, 101 Mich. 555 (1894), takes the extreme view supported in *Feoffees &c.* v. *Ross*, *supra*, that a charitable corporation can never be liable for the negligence of its servants. *McDonald* v. *Massachusetts General Hospital*, 120 Mass. 432 (1876), and *Union Pacific Ry. Co.* v. *Artist*, 60 Fed. Rep. 365 (1894), take a middle ground, that the duty of a charitable hospital corporation is confined to the exercise of reasonable care in furnishing suitable accommodations and competent attendants; and that beyond the performance of these duties there is no liability of the corporation for the negligence of its servants. *Glavin* v. *R. I. Hospital*, 12 R. I. 411 (1879), on the other hand, holds that, once the relation

of servant and master is made out, a charitable corporation is liable for its servants' negligent acts, — adopting the doctrine of *Foreman* v. *Mayor &c.*

Despite *Downes* v. *Hospital*, *supra*, it is generally law then that a corporation designed for charitable (or public) purposes is liable for the non-performance of whatever duty may be imposed upon it; nor is it a sufficient answer to allege that its non-performance was due to its servants' negligence, or that it possessed no funds but those dedicated to carrying out its charitable or public purposes. The exact extent of the duty imposed is often a troublesome question. That difficulty, however, does not affect the liability of a corporation once the duty is determined. But the decisions cited *supra* show that the question whether, beyond this liability for the non-performance of duty, there is a liability for the negligence of the corporation's servants, is still open. The English courts (*Foreman* v. *Mayor &c.*, *supra*) now decline to recognize any distinction in applying the doctrine of *respondeat superior* to charitable and to business corporations. Yet this doctrine has never been sustained on satisfactory grounds; it has been vigorously assailed at times (see Parliamentary Blue Book on the Employers' Liability Bill, 1877; testimony of Bramwell and Brett, L. JJ., pp. 58, 59, 115, 119), and is questioned in Pollock on Torts, 2d edition, 69, 70. It may be well doubted, therefore, whether it should be extended to the case of charitable corporations, where it is more likely to impair than to secure substantial justice. The Connecticut Supreme Court in the last decided case on the point (*Hearns* v. *Waterbury Hospital*, 33 Atl. Rep 595), after a careful and exhaustive consideration of authorities, has refused to make such an extension. The outcome of a similar case, at present awaiting decision in the New Hampshire Supreme Court, will be watched with interest.

Of course if, in certain circumstances, a charitable corporation can be said to be a servant of the public in the sense that an officer of state is such a servant, the doctrine of *respondeat superior* is inapplicable on other grounds.

RECENT CASES.

AGENCY — LIBEL — LIABILITY OF MANAGING EDITOR OF NEWSPAPER. — *Held*, where the managing editor of a newspaper is also an officer of the corporation owning the paper, he is equally liable with the publisher and proprietor for the consequences of a libellous publication, and mere want of knowledge on his part is no defence, since it is his business to know. *Smith* v. *Utley*, 65 N. W. Rep. 744 (Wis.).

If in this case the libellous matter actually passed through the hands of the managing editor to those employed in the actual work of printing, there is no question of his liability. It is a positive act, like a trespass on land. But assuming that it did not so happen, the case turns on the distinction between nonfeasance and misfeasance. Did the editor by assuming his position so interfere, and play such an active part, that he became responsible to third persons for the careful conduct of the paper? It seems difficult to say that he did not, and yet it has been held that a general agent, having control of real estate, cannot be held for injuries received from the falling of a door on account of its being out of repair. *Baird* v. *Shipman*, 132 Ill, 16. The fact that the editor here was an officer of the corporation has no bearing on the matter.

AGENCY — WHEN KNOWLEDGE OF AGENT IS KNOWLEDGE OF PRINCIPAL. — Where the agent of an insurance company has acquired knowledge of outstanding